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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 74688/P004CP1D1/10804933

	Application Number	Filed
	10/816,183-Conf. #7854	March 31, 2004
	First Named Inventor: Raymond P. Feith et al.	
	Art Unit: 3763	Examiner: Q. H. Vu

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant /inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [x] attorney or agent of record. Registration number 39,643
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____

Craig J. Cox
Signature

Craig J. Cox
Typed or printed name

(214) 855-7142
Telephone number

August 31, 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [ ] *Total of 1 forms are submitted.

Pre-Appeal Brief Request for Review

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: August 31, 2009 Signature: Lisa deCordova (Lisa deCordova)

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Docket No.: 74688/P004CP1D1/10804933
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Raymond P. Feith et al.

Application No.: 10/816,183 | Confirmation No.: 7854

Filed: March 31, 2004 | Art Unit: 3763

For: MULTI-VALVE INJECTION/ASPIRATION MANIFOLD WITH NEEDLELESS ACCESS CONNECTION | Examiner: Q. H. Vu

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

Applicant requests review of the rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reason(s) stated below.

REMARKS

I. General

Claims 1-3 are currently pending. In the Office Action dated April 30, 2009 (the "Office Action") the Examiner has rejected claim 1-3 on the following grounds: Claim 1 is rejected under 35 U.S.C. 112, first paragraph; Claim 1 is rejected under 35 U.S.C. 102(a) as anticipated by U.S. Patent No. 4,946,448 as to Richmond (hereinafter "Richmond"); Claims 1-3 are rejected under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 4,922,954 as to Blomquist et al (hereinafter "Blomquist") in view of U.S. Patent No. 3,889,710 as to Brost (hereinafter "Brost"); Claims 1-3 are rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 5-7 of United States Patent No. 6,364,861. The rejections should be revered as they are clearly improper.

Applicant conducted a telephonic interview with the Examiner on June 17, 2009. It became clear during that interview that the Examiner was misapplying the prior art references no progress could be made in regular examination. As a result of the interview, therefore, Applicant has determined that the only mechanism to further examination in the present case is to institute an appeal.

II. 35 U.S.C. 112, First Paragraph Rejection

Claim 1 has been rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. Specifically, the Examiner asserts that the specification does not support the amendments to claim 1 made in the preliminary amendment accompanying the RCE filed on February 24, 2009 where the Applicant amended claim 1 to recite that the first pressure results from fluid in the flow channel, that the second pressure results from fluid in the flow channel, and that the third pressure results from fluid in the injection lumen. Applicant respectfully traverses the rejection under 35 U.S.C. 112, first paragraph. The amendments did not change the operation of the port of claim 1, but rather merely clarified the existing limitations of claim 1. As mere clarification, they could not fail to comply with the written description requirement as the unamended claim 1 was filed in the original specification.

Further, the limitations themselves contain ample support in the specification. The specification is clear that the invention concerns ports and manifolds for injecting fluids in IV lines. Page 1, lines 12-13 and 18-24. The operation of the port and first and second is illustrated by Figures 12 and 13 and described on pages 12 and 13 of the specification. Specifically, page 12 lines 24-31 describe the operation of the two seat valve of claim 1 and Figure 12 shows the position of the valve element 70 under normal fluid flow in the channel resting against first valve seat 96. Page 12 lines 10-22 describe that in its normal configuration valve element 70 forms a seal with the first valve seat 96.

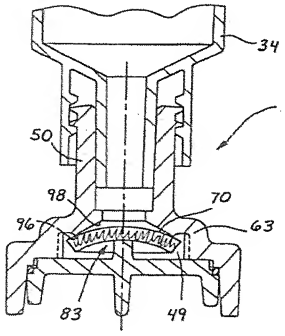

Figure 12

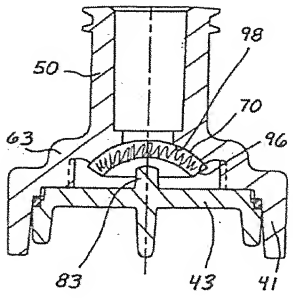

Figure 13

Next, with respect to the second pressure, when an injectate is introduced through an adjacent port a high pressure situation occurs in flow channel 49. The pressure, higher than the normal pressure in the flow channel, will cause the valve element to contact the second valve seat 98 as shown in Figure 13 and described on page 12, lines 24-31. With respect to the claimed limitation of the third pressure, page 13 lines 20-25 describe the operation of the port in this state, which is also shown by Figures 15 and 19. The specification is clear that under the fluid pressure of an injectate the valve element is bend downwardly and the injectate flows through the first valve and into the flow channel. Page 13, lines 20-25. This operation of the valve element can only occur if the pressure of the injectate is greater than the existing pressure in the flow channel, i.e. the first pressure or the second pressure.

As the claim limitations used by the Examiner in supporting the rejection under 35 U.S.C. 112, first paragraph are clearly supported by the written description for the reasons set forth above, the rejection under 35 U.S.C. 112, first paragraph is improper and should be reversed.

III. 35 U.S.C. 102(b), First Paragraph Rejection

On pages 2-3 of the Office Action, claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by Richmond.

In the Examiner's rejection the Examiner correctly describes the operation of the check valve of Richmond in forming a seal using valve seat 78 in response to a pressure resulting from fluid in conduit 34. This pressure is represented by P1 in Figure 2.

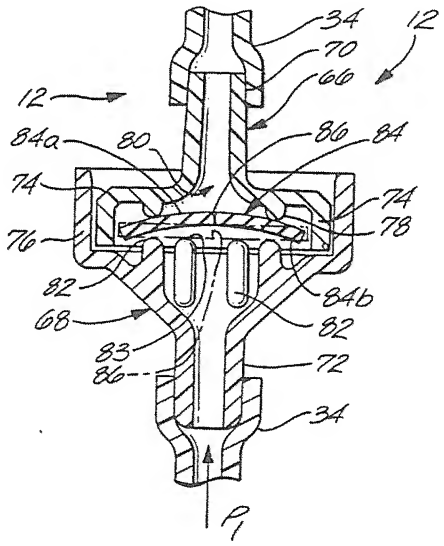

Figure 2 - Richmond

With respect to the second pressure and second seal recited in claims 1, the Examiner states that it is inherent that a second pressure (a force to press down) is greater than the first pressure, therefore the valve disk 84 is open and liquid flows downwardly. This is clearly different that the recitation of the second pressure in claim 1. Claim 1 requires both that the second pressure and the first pressure both result from fluid in the flow channel. The recitation of the Examiner describes the opposite. Further, the second pressure in claim 1 results in the formation of a second seal. The Examiner's rejection admits that the pressure described in Richmond would cause the valve into an open position allowing liquid to flow.

The Examiner has also pointed to elements 82 and 83 as forming a second valve seat. This is contrary to the express teachings of Richmond. Richmond describes element 82 as a series of prongs, and element 83 as the rounded tips of those prongs that support the valve disk 84 when the valve is in its open positions. Column 4, lines 45-49. As is expressly stated in Richmond, the prongs are not a valve seat as described by the Examiner, but instead are used to support the valve disc 84 when the check valve

is in the open conditions, permitting liquid to flow. Column 4, lines 52-55. Prongs 82 are, therefore, not a valve seat upon which the valve element can form a second seal in response to the second pressure as required by claim 1.

While Richmond describes a check valve with a closed position in response to a downstream pressure and an open position in response to an upstream pressure, nowhere does Richmond describe the valve element forming a second seal with the second valve seat in response to a second pressure, the second pressure resulting from fluid in the flow channel, the second pressure greater than the first pressure of the fluid in the flow channel as is required by claim 1.

As Richmond does not describe each and every limitation of claim 1, claim 1 is allowable over Richmond.

IV. 35 U.S.C. 102(b), First Paragraph Rejection

Pages 3-5 of the Office Action describe the rejection of claims 1-3 as obvious over U.S. Patent No. 4,922,954 as to Blomquist in view of Brost.

The Examiner has states that Blomquist describes the limitations of claim 1 set forth above. Applicant respectfully disagrees. Blomquist describes a bi-directional vent for a fuel tank that includes a seal element 37 that includes valve seats 38 and 39. Abstract and Figure 7. Instead of responding to pressures to cause the valve element to form seals against valve seats, Blomquist does the opposite. When the pressures inside the tank and outside the tank are equal, the valve element of Blomquist rests against the valve seats 38 and 39. Figure 7. When there is a pressure differential between the inside of the take and the outside of the tank, the valve element either moves off of seat 39 to allow air to enter the tank, Figure 8, or off of seat 38 to allow air to exit the tank, Figure 9.

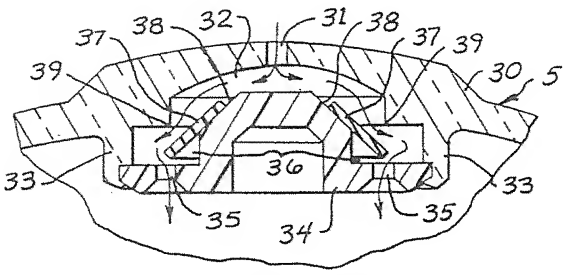

Figure 8 – Blomquist

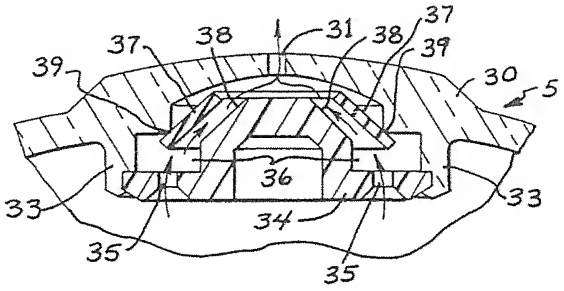

Figure 9 – Blomquist

Blomquist never responds to a first pressure by forming a first seal with the valve element disposed against a first valve seat.

Further, Blomquist never describes a first and a second pressure both resulting from fluid in a flow channel. Nor does Blomquist describe a the valve element forming a second seal with the second valve seat in response to a second pressure, the second pressure resulting from fluid in the flow channel,

the second pressure greater than the first pressure of the fluid in the flow channel as is required by claim 1. As Blomquist does not describe, and Brost is not relied upon as describing, a first pressure and a second pressure both resulting from fluid in a fluid channel where the second pressure is greater than the first pressure. Neither Blomquist, nor Brost, alone or in combination describe each and every limitation of claim 1 as required under 35 U.S.C. 103.

V. Nonstatutory Double Patenting

Claims 1-3 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, and 5-7 of U.S. Patent No. 6,364,861.

In the response dated August 28, 2008, Applicant pointed out that claims 1-3 require the valve element forming an open configuration between said lumen and said flow channel in response to a third pressure resulting from fluid in the injection lumen the third pressure greater than one of said first pressure and said second pressure. As this limitation is not found in claims 1-25 of the '861 patent, the claims of the present application are structurally distinguishable and therefore patentably distinct from the claims of the '861 patent. Applicant, therefore requests that the double patenting rejection be reversed.

VI. Summary

In view of the above, Applicant respectfully requests that the review panel reverse the outstanding rejections in the present application. The required fee for the Notice of Appeal filed with this request is being paid by credit card. Please charge any additional fees required or credit any overpayment during the pendency of this Application pursuant to 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees to Deposit Account No. 06-2380, under Order No. 74688/P004CP1D1/10804933 from which the undersigned is authorized to draw.

Dated: August 31, 2009

Respectfully submitted,

By _____
Craig J. Cox
Registration No.: 39,643
FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-2784
(214) 855-7142
(214) 855-8200 (Fax)
Attorney for Applicant

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: August 31, 2009

Signature: _____
(Lisa deCordova)